

Gary, Aaron

From: Gary, Aaron
Sent: Tuesday, October 18, 2011 10:15 AM
To: Malszycki, Marcie
Subject: RE: Rental Purchase Agreements

Hi Marcie,

I made most of these changes and put the draft back into editing. Two of the suggested changes are not consistent with proper drafting, but the underlying substantive concern expressed by the work group is covered by the draft. These two are as follows:

1. Page 5, line 16: The term "permitted" is neither necessary nor helpful - the phrase "as determined under sub. (1)" at the end of that line identifies precisely what the maximum cash price is.
2. Insert 2 is already covered in the "/P1" draft. There are many exclusions to the WCA under current law and the preferred method of clearly identifying rental-purchase companies and rental-purchase agreements as excluded from the WCA is to add them to the present list of exclusions under the WCA. This was done in the "/P1", consistent with the initial drafting instructions, in created s. 421.202 (11) of the bill. The exclusion from UCC article 9 is also in the "/P1" in created s. 409.109 (4) (n). We have a strong policy against redundant provisions like the one offered in insert 2 because they often create inconsistency, confusion, and ambiguity. I also direct you to the analysis of the "/P1" draft, which states unequivocally at the beginning of the second paragraph that rental-purchase companies and rental-purchase agreements are exempted from the WCA. So the "/P1" already covers the stated intent below that I have marked in red. In addition, the suggested changes in insert 2 on "oversight and enforcement" are not different in substance from what is already in the "/P1" draft on p. 7, lines 11-12, although I have made a slight change in the redraft there (the statutes do not refer to "oversight and enforcement" so I have changed "enforce" on line 11 to "administer and enforce").

I highly recommend that you have the draft reviewed by DFI for comment. I continue to believe that, despite these changes, DFI would have little actual enforcement ability, although I would certainly defer to DFI's opinion on that topic after it has reviewed the draft.

Do you want this next draft to be a "/P2" or an introducible "/1"?

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Malszycki, Marcie
Sent: Monday, October 17, 2011 9:30 AM
To: Gary, Aaron
Subject: Rental Purchase Agreements

Aaron,

Thank you for the draft and for your notes. I ran your notes passed our workgroup and here is their response. Please let me know if you have more questions or concerns for us. We want to ensure that this legislation is drafted properly.

Thank you again for your time.

Marcie Malszycki
Office of Representative Warren Petryk

Gary, Aaron

From: Gary, Aaron
Sent: Monday, January 23, 2012 10:59 AM
To: Malszycki, Marcie
Subject: RE: LRB-2924

Hi Marcie,

As I explained in my earlier e-mail (I will forward that next), these changes are not consistent with proper drafting. I will call you this afternoon to discuss further.
Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Malszycki, Marcie
Sent: Friday, January 20, 2012 9:11 AM
To: Gary, Aaron
Subject: RE: LRB-2924

Aaron,

We are almost ready to go on this but there are a few edits.

The following are two changes that we would like to have added to the bill please:

Department of Financial Institution's Authority – Page 5, Insert Between Lines 6 and 7

We had suggested adding a paragraph to make clear that rental-purchase companies and rental-purchase agreements are subject to the Department of Financial Institution's oversight and enforcement authority but, because of the distinct nature of the product, not subject to the Wisconsin Consumer Act. Accordingly, the following language should be inserted into the Draft Bill:

420.02(3) OVERSIGHT AND ENFORCEMENT. Rental-purchase companies and rental-purchase agreements are subject to the department's oversight and enforcement authority provided that a rental-purchase company that has provided notice to the department shall not be subject to the Wisconsin consumer act in chs. 421 to 427 or any related rule or order adopted under chs. 421 to 427 and any rental-purchase agreements entered into by a rental-purchase company shall not be construed or regulated as a security interest, credit sale, retail installment sale, conditional sale or any other form of consumer credit, nor governed by laws that impute to a rental-purchase agreement the creation of a debt or extension of credit.

Price and Cost Limitations – Page 5, Insert at Line 18

We had suggested inserting the word "permitted" when describing "the maximum cash price" to make clear that it would be determined by amounts allowed and set forth in the preceding subsection. Accordingly, the following word should be inserted into the Draft Bill:

18 transaction shall not exceed twice the maximum permitted cash price of the property
as

Please let me know if you have any questions.

Marcie Malszycki

Office of Representative Warren Petryk
608-266-0660
306 North, State Capitol

From: Gary, Aaron
Sent: Wednesday, January 18, 2012 11:52 AM
To: Malszycki, Marcie
Subject: LRB-2924

Hi Marcie,

Attached is the .pdf of the latest (/P2) version. Let me know if you want me to make it a /1 or if you need changes. thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

Gary, Aaron

From: Gary, Aaron
Sent: Monday, January 23, 2012 11:00 AM
To: Malszycki, Marcie
Subject: FW: Rental Purchase Agreements

The prior e-mail is below

From: Gary, Aaron
Sent: Tuesday, October 18, 2011 10:15 AM
To: Malszycki, Marcie
Subject: RE: Rental Purchase Agreements

Hi Marcie,

I made most of these changes and put the draft back into editing. Two of the suggested changes are not consistent with proper drafting, but the underlying substantive concern expressed by the work group is covered by the draft. These two are as follows:

1. Page 5, line 16: The term "permitted" is neither necessary nor helpful - the phrase "as determined under sub. (1)" at the end of that line identifies precisely what the maximum cash price is.
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I highly recommend that you have the draft reviewed by DFI for comment. I continue to believe that, despite these changes, DFI would have little actual enforcement ability, although I would certainly defer to DFI's opinion on that topic after it has reviewed the draft.

Do you want this next draft to be a "/P2" or an introducible "/1"?

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Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
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From: Malszycki, Marcie
Sent: Monday, October 17, 2011 9:30 AM
To: Gary, Aaron

Subject: Rental Purchase Agreements

Aaron,

Thank you for the draft and for your notes. I ran your notes passed our workgroup and here is their response. Please let me know if you have more questions or concerns for us. We want to ensure that this legislation is drafted properly.

Thank you again for your time.

Marcie Malszycki

Office of Representative Warren Petryk

608-266-0660

306 North, State Capitol

<< File: Rent To Own Edits from Peterson.pdf >>

We have reviewed the draft legislation on the proposed regulation of rental-purchase companies (LRB-2924/P1) (the "Draft Bill") as well as the drafter's note that accompanied it. Based on this review, attached is a mark-up with our suggested edits to the Draft Bill and we offer the following:

Notice to the Department of Financial Institutions – Pages 4-5

To make clear that rental-purchase companies are subject to the Department of Financial Institution's ("DFI") oversight and enforcement authority, language has been added to this section. With this additional language it should be even more clear that a rental-purchase company that does not pay an annual fee may not remain open for business.

The full amount of any fees deposited in this section should be available to DFI.

Given the unique nature of a rent-to-own transaction and its differences with a traditional consumer credit sale, a suggested edit to the Draft Bill is made to make clear that a rental-purchase company and rental-purchase agreements are not subject to the Wisconsin Consumer Act.

Price and Cost Limitations – Page 5

The Draft Bill is edited to make clear that "cash price" does not include any late fees or reinstatement fees.

Given the indefinite time-period of a rent-to-own transaction, the Draft Bill is edited to make clear that a rental-purchase company "shall not disclose" any APR finance charge information.

Reinstatement and the Effect of Repossession on Reinstatement – Pages 6-7

After carefully considering its wording and the day-to-day practices of rental-purchase companies, the reinstatement section remains unchanged but for one minor edit. If it would assist in this process, we would be available to speak to the drafting attorney and go through this section line-by-line to ensure that it is consistent and drafted with clarity.

Recordkeeping and Reporting Obligations – Page 7

Language has been added to the rulemaking and enforcement section making clear that, through rulemaking, rental-purchase companies may be required to maintain certain records or make reports to DFI.

LRB-2424

1/24

tlc w/ Marcie - wants me to talk directly
with Mike Wittenwyler, as he has ~~issues~~ concerns
with the draft / email

1/24

tlc w/ Wittenwyler
358-1800 mobile

~~Has not~~

- add new WCA or UCC language -
need all of it - based
on Minn case & other decisions -
believe it is vital, even if
duplicative

Gary, Aaron

From: Malszycki, Marcie
Sent: Wednesday, January 25, 2012 12:57 PM
To: Gary, Aaron
Subject: RE: LRB-2924

We are good to go on this language. Thank you.

Marcie Malszycki

Office of Representative Warren Petryk
608-266-0660
306 North, State Capitol

From: Gary, Aaron
Sent: Tuesday, January 24, 2012 4:28 PM
To: Malszycki, Marcie
Subject: RE: LRB-2924

Hi Marcie,

I did talk to Mike today. It was helpful to hear his explanation of why the redundancy is desired. Though I'm not exactly happy with it, I can live with the following provision. Can you? (This new section would be the only change made in the redraft.)

[create] 420.07 Inapplicability of Consumer Act and ch. 409. A rental-purchase company that has filed notice as provided under s. 420.02 (1) is not subject to the Wisconsin consumer act, chs. 421 to 427, or any related rule or order adopted under chs. 421 to 427, or to any provision of ch. 409, and any rental-purchase agreement entered into by such a rental-purchase company may not be construed or regulated as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, nor considered to be the creation of a debt or extension of credit.

Let me know if I can put this into editing. Thanks! Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

1/25/2012



State of Wisconsin
2011 - 2012 LEGISLATURE

in 1/25



LRB-2924/P3
ARG:kjf:ph

P3

wanted
by 1/26

RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

only change - p. 8
editors: I think this change
is already covered in analysis

Rege n

- 1 AN ACT ~~to create~~ 409.109 (4) (n), chapter 420 and 421.202 (11) of the statutes;
2 relating to: regulation of rental-purchase agreements and granting
3 rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act grants consumers certain rights and remedies and contains notice and disclosure requirements and prohibitions relating to consumer credit transactions. Currently, a consumer lease that has a term of more than four months is among the consumer credit transactions that are subject to the consumer act. In addition, the consumer act applies to any other consumer lease, if the lessee pays or agrees to pay at least an amount that is substantially equal to the value of the leased property and if the lessee will become, or for not more than a nominal additional payment has the option to become, the owner of the leased property.

This bill creates requirements that specifically apply to rental-purchase agreements, imposes requirements on rental-purchase companies, and exempts rental-purchase companies and rental-purchase agreements from the scope of the consumer act and from provisions of the Uniform Commercial Code relating to security interests. The bill defines a "rental-purchase agreement" as an agreement between a rental-purchase company and a lessee for the use of rental property if all of the following apply: 1) the rental property is to be used primarily for personal, family, or household purposes; 2) the agreement has an initial term of four months

or less and is renewable with each payment after the initial term; 3) the agreement does not obligate or require the lessee to renew the agreement beyond the initial term; and 4) the agreement permits, but does not obligate, the lessee to acquire ownership of the rental property. A “rental-purchase company” is defined as a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

The bill requires a rental-purchase company to file notice with the Department of Financial Institutions (DFI) within 30 days after commencing business in this state. A separate notice is required for each place of business maintained by the rental-purchase company. In addition, the rental-purchase company must pay to DFI an annual fee of \$1,000 for each location for which a notice is filed.

Under the bill, the total amount charged by a rental-purchase company for all required charges or fees, excluding applicable taxes and any late fees or reinstatement fees, in a rental-purchase transaction may not exceed twice the maximum cash price of the rental property. The maximum cash price of rental property may not exceed the greater of the following: 1) an amount equal to twice the actual purchase price of the rental property, including any applicable freight charges, paid by the rental-purchase company; or 2) the price at which property of like type and quality is offered, in the ordinary course of business, for sale for cash in the market area of the rental-purchase store where the property is offered for rental purchase. The bill also limits the maximum amount that a lessee must pay to acquire ownership of the property if the lessee elects an early-purchase option after the initial rental period. This maximum amount to acquire ownership under an early-purchase option is the greater of the following: 1) an amount not to exceed 55 percent of the difference between the total of rental payments necessary to acquire ownership of the rental property and the total amount of rental payments paid for use of the rental property at that time, plus applicable taxes; or 2) the amount of one rental payment. Before a lessee acquires ownership of the rental property under an early-purchase option, the rental-purchase company may require the lessee to pay any accrued unpaid rental payments and fees.

The bill specifies that a rental-purchase company must not disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including an annual percentage rate.

Under the bill, a lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired if all of the following apply: 1) the lessee voluntarily returned or surrendered the rental property within seven days after the expiration of the rental-purchase agreement; and 2) not more than 120 days have passed after the date on which the rental-purchase agreement ended. As a condition of reinstatement, the rental-purchase company may require the payment of all past-due rental charges, any applicable late fees, a reinstatement fee not to exceed \$5, and the rental payment for the next term. Upon reinstatement, the rental-purchase company must provide the lessee with the same rental property or with substitute property of comparable quality and condition. A rental-purchase company must provide written notice to a lessee of the lessee's rights and obligations relating to reinstatement of the rental-purchase agreement within 15 days of

repossession or voluntary return or surrender of the rental property, if the lessee is entitled to reinstatement.

Under the bill, a rental-purchase company that violates any of these provisions, or any applicable rule or order of DFI, pertaining to a lessee is liable to the lessee in an amount equal to the greater of the following: 1) the actual damages sustained by the lessee as a result of the violation; 2) if the action is not brought as a class action, 25 percent of the total payments necessary for the lessee to acquire ownership of the rental property, but not less than \$100 nor more than \$1,000; or 3) if the action is brought as a class action, the amount the court determines to be appropriate. However, there are two limitations on such an award of damages. First, a rental-purchase company is not liable for any violation if the rental-purchase company shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, and the rental-purchase company maintained procedures reasonably adapted to avoid such an error. Second, in a class action or series of class actions, the total recovery by all lessees arising out of the same violation may not be more than the lesser of \$500,000 or 1 percent of the net worth of the rental-purchase company. If a court awards any monetary amount of damages to a lessee, the rental-purchase company is also liable to the lessee for the costs of the action and reasonable attorney fees.

The bill allows DFI to promulgate rules relating to rental-purchase company disclosure requirements and requirements for rental-purchase companies to maintain records and make reports to DFI. The bill also requires DFI to administer and enforce the provisions of the bill.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 409.109 (4) (n) of the statutes is created to read:

2 409.109 (4) (n) Any rental–purchase company that has filed notice as provided
3 under s. 420.02 (1) and any rental–purchase agreement entered into by such a
4 rental–purchase company.

5 **SECTION 2.** Chapter 420 of the statutes is created to read:

6 CHAPTER 420

7 RENTAL-PURCHASE COMPANIES

420.01 Definitions. In this chapter:

1 (1) “Cash price” means the price at which a rental–purchase company would
2 sell rental property to the lessee of the rental property if the lessee were to pay for
3 the rental property in full on the date on which the rental–purchase agreement is
4 executed.

5 (2) “Department” means the department of financial institutions.

6 (3) “Rental property” means property rented under a rental–purchase
7 agreement but does not include any motor vehicle, as defined in s. 340.01 (35).

8 (4) “Rental–purchase agreement” means an agreement between a
9 rental–purchase company and a lessee for the use of rental property if all of the
10 following apply:

11 (a) The rental property is to be used primarily for personal, family, or household
12 purposes.

13 (b) The agreement has an initial term of 4 months or less and is renewable with
14 each payment after the initial term.

15 (c) The agreement does not obligate or require the lessee to renew the
16 agreement beyond the initial term.

17 (d) The agreement permits, but does not obligate, the lessee to acquire
18 ownership of the rental property.

19 (5) “Rental–purchase company” means a person engaged in the business of
20 entering into rental–purchase agreements in this state or acquiring rental–purchase
21 agreements that are entered into in this state.

22 **420.02 Notice to the department. (1) NOTICE REQUIRED.** A rental–purchase
23 company shall file notice with the department, in the form and manner prescribed
24 by the department, within 30 days after commencing business in this state. A

1 separate notice is required for each place of business maintained by the
2 rental-purchase company.

3 (2) FEE. For each location for which a notice is filed under sub. (1), the
4 rental-purchase company shall pay to the department an annual fee of \$1,000. If a
5 rental-purchase company fails to timely pay the annual fee, the department shall
6 order the rental-purchase company to cease operating until the annual fee is paid.

7 **420.03 Price and cost limitations. (1) LIMITS ON CASH PRICES.** The cash price
8 for rental property offered by a rental-purchase company may not exceed the greater
9 of the following:

10 (a) An amount equal to twice the actual purchase price of the rental property,
11 including any applicable freight charges, paid by the rental-purchase company.

12 (b) The price at which property of like type and quality is offered, in the
13 ordinary course of business, for sale for cash in the market area of the
14 rental-purchase store where the property is offered for rental purchase.

15 (2) LIMITS ON COST OF RENTAL SERVICES AND OTHER CHARGES. The total amount
16 charged by the rental-purchase company for all required charges or fees, excluding
17 applicable taxes and any late fees or reinstatement fees, in a rental-purchase
18 transaction shall not exceed twice the maximum cash price of the property as
19 determined under sub. (1).

20 (3) ACQUISITION OF OWNERSHIP. At any time after the initial rental period under
21 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase
22 option, the lessee may acquire ownership of the rental property by tendering an
23 amount not to exceed 55 percent of the difference between the total of rental
24 payments necessary to acquire ownership of the rental property and the total
25 amount of rental payments paid for use of the rental property at that time, plus

1 applicable taxes, except that the lessee's early-purchase option amount may not be
2 less than the amount of one rental payment. Before a lessee acquires ownership of
3 the rental property as provided under this subsection, a rental-purchase company
4 may first require the lessee to pay any accrued unpaid rental payments and fees.

5 (4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED. A rental-purchase
6 company shall not disclose, in a rental-purchase agreement or otherwise, any
7 percentage rate calculation, including a time-price differential, an annual
8 percentage rate, or an effective annual percentage rate.

9 **420.04 Reinstatement of a rental-purchase agreement. (1)**

10 REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a
11 rental-purchase agreement that has ended without losing any rights or options
12 previously acquired if all of the following apply:

13 (a) The lessee voluntarily returned or surrendered the rental property within
14 7 days after the expiration of the rental-purchase agreement.

15 (b) Not more than 120 days have passed after the date on which the
16 rental-purchase agreement ended.

17 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
18 under sub. (1), the rental-purchase company may require the payment of all
19 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed
20 \$5, and the rental payment for the next term.

21 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section prohibits
22 a rental-purchase company from repossessing or attempting to repossess rental
23 property when a rental-purchase agreement ends, but such efforts do not affect the
24 lessee's right to reinstate as long as the rental property is voluntarily returned or
25 surrendered within 7 days after the rental-purchase agreement ends.

1 **(4) PROPERTY AVAILABLE UPON REINSTATEMENT.** Upon reinstatement, the
2 rental-purchase company shall provide the lessee with the same rental property, if
3 the property is available and is in the same condition as when it was returned to the
4 rental-purchase company, or with substitute property of comparable quality and
5 condition.

6 **(5) NOTICE OF REINSTATEMENT RIGHTS.** If the lessee is entitled to reinstatement
7 under subs. (1) and (2), within 15 days of repossession or voluntary return or
8 surrender of the rental property, the rental-purchase company shall provide written
9 notice to the lessee of the lessee's rights and obligations under this section.

10 **420.05 Rule making; enforcement. (1) RULE MAKING.** The department may
11 promulgate rules relating to rental-purchase company disclosure requirements in
12 connection with rental-purchase agreements as well as rules relating to any
13 requirement by the department for rental-purchase companies to maintain records
14 and make reports to the department.

15 **(2) ENFORCEMENT.** The department shall administer and enforce this chapter,
16 and any rule promulgated under, or order issued under, this chapter.

17 **420.06 Penalties. (1) AWARD OF DAMAGES.** Subject to sub. (3), a
18 rental-purchase company that violates any provision of this chapter, rule
19 promulgated under this chapter, or order issued under this chapter pertaining to a
20 lessee is liable to the lessee in an amount equal to the greater of the following:

21 (a) The actual damages sustained by the lessee as a result of the violation.

22 (b) If the action is not brought as a class action, 25 percent of the total payments
23 necessary for the lessee to acquire ownership of the rental property, but not less than
24 \$100 nor more than \$1,000.

1 (c) If the action is brought as a class action, the amount the court determines
2 to be appropriate, subject to sub. (2).

3 (2) DAMAGE LIMITATIONS IN CLASS ACTIONS. The total recovery by all lessees in
4 any class action or series of class actions arising out of the same violation may not
5 be more than the lesser of \$500,000 or 1 percent of the net worth of the
6 rental-purchase company. In determining the amount of any award in a class action,
7 the court shall consider, among other relevant factors, the amount of actual damages
8 awarded, the frequency and persistence of the violation, the rental-purchase
9 company's resources, and the extent to which the rental-purchase company's
10 violation was intentional.

11 (3) UNINTENTIONAL VIOLATIONS. A rental-purchase company is not liable for any
12 violation of this chapter if the rental-purchase company shows by a preponderance
13 of the evidence that the violation was not intentional and resulted from a bona fide
14 error, and the rental-purchase company maintained procedures reasonably adapted
15 to avoid such an error.

16 (4) COSTS AND ATTORNEY FEES. If a court awards any monetary amount under
17 sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for
18 the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees
19 as determined by the court.

20 **SECTION 3.** 421.202 (11) of the statutes is created to read:

21 421.202 (11) Any rental-purchase company that has filed notice as provided
22 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a
23 rental-purchase company.

24 **SECTION 4. Initial applicability.**

(1) This act first applies to rental-purchase agreements, and conduct pursuant to those agreements, that are entered into on the effective date of this subsection.

3 **SECTION 5. Effective date.**

4 (1) This act takes effect on the 90th day after publication.

5 (END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2924/P3ins
ARG:.....

1
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4
5
6
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9
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11
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INSERT 8-19:

420.07 Inapplicability of Consumer Act and ch. 409. A rental-purchase company that has filed notice as provided under s. 420.02 (1) is not subject to the Wisconsin consumer act, chs. 421 to 427, or any related rule or order adopted under chs. 421 to 427, or to any provision of ch. 409, and any rental-purchase agreement entered into by such a rental-purchase company may not be construed or regulated as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, nor considered to be the creation of a debt or extension of credit.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2924/1
ARG:kjf:rs

TODAY

RMR

1/26 Per Macie, wants /1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes

Rezen

- 1 AN ACT ~~to create~~ 409.109 (4) (n), chapter 420 and 421.202 (11) of the statutes;
- 2 relating to: regulation of rental-purchase agreements and granting
- 3 rule-making authority.

Analysis by the Legislative Reference Bureau

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This bill creates requirements that specifically apply to rental-purchase agreements, imposes requirements on rental-purchase companies, and exempts rental-purchase companies and rental-purchase agreements from the scope of the consumer act and from provisions of the Uniform Commercial Code relating to security interests. The bill defines a "rental-purchase agreement" as an agreement between a rental-purchase company and a lessee for the use of rental property if all of the following apply: 1) the rental property is to be used primarily for personal, family, or household purposes; 2) the agreement has an initial term of four months

or less and is renewable with each payment after the initial term; 3) the agreement does not obligate or require the lessee to renew the agreement beyond the initial term; and 4) the agreement permits, but does not obligate, the lessee to acquire ownership of the rental property. A "rental-purchase company" is defined as a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

The bill requires a rental-purchase company to file notice with the Department of Financial Institutions (DFI) within 30 days after commencing business in this state. A separate notice is required for each place of business maintained by the rental-purchase company. In addition, the rental-purchase company must pay to DFI an annual fee of \$1,000 for each location for which a notice is filed.

Under the bill, the total amount charged by a rental-purchase company for all required charges or fees, excluding applicable taxes and any late fees or reinstatement fees, in a rental-purchase transaction may not exceed twice the maximum cash price of the rental property. The maximum cash price of rental property may not exceed the greater of the following: 1) an amount equal to twice the actual purchase price of the rental property, including any applicable freight charges, paid by the rental-purchase company; or 2) the price at which property of like type and quality is offered, in the ordinary course of business, for sale for cash in the market area of the rental-purchase store where the property is offered for rental purchase. The bill also limits the maximum amount that a lessee must pay to acquire ownership of the property if the lessee elects an early-purchase option after the initial rental period. This maximum amount to acquire ownership under an early-purchase option is the greater of the following: 1) an amount not to exceed 55 percent of the difference between the total of rental payments necessary to acquire ownership of the rental property and the total amount of rental payments paid for use of the rental property at that time, plus applicable taxes; or 2) the amount of one rental payment. Before a lessee acquires ownership of the rental property under an early-purchase option, the rental-purchase company may require the lessee to pay any accrued unpaid rental payments and fees.

The bill specifies that a rental-purchase company must not disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including an annual percentage rate.

Under the bill, a lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired if all of the following apply: 1) the lessee voluntarily returned or surrendered the rental property within seven days after the expiration of the rental-purchase agreement; and 2) not more than 120 days have passed after the date on which the rental-purchase agreement ended. As a condition of reinstatement, the rental-purchase company may require the payment of all past-due rental charges, any applicable late fees, a reinstatement fee not to exceed \$5, and the rental payment for the next term. Upon reinstatement, the rental-purchase company must provide the lessee with the same rental property or with substitute property of comparable quality and condition. A rental-purchase company must provide written notice to a lessee of the lessee's rights and obligations relating to reinstatement of the rental-purchase agreement within 15 days of

1 (1) "Cash price" means the price at which a rental-purchase company would
2 sell rental property to the lessee of the rental property if the lessee were to pay for
3 the rental property in full on the date on which the rental-purchase agreement is
4 executed.

5 (2) "Department" means the department of financial institutions.

6 (3) "Rental property" means property rented under a rental-purchase
7 agreement but does not include any motor vehicle, as defined in s. 340.01 (35).

8 (4) "Rental-purchase agreement" means an agreement between a
9 rental-purchase company and a lessee for the use of rental property if all of the
10 following apply:

11 (a) The rental property is to be used primarily for personal, family, or household
12 purposes.

13 (b) The agreement has an initial term of 4 months or less and is renewable with
14 each payment after the initial term.

15 (c) The agreement does not obligate or require the lessee to renew the
16 agreement beyond the initial term.

17 (d) The agreement permits, but does not obligate, the lessee to acquire
18 ownership of the rental property.

19 (5) "Rental-purchase company" means a person engaged in the business of
20 entering into rental-purchase agreements in this state or acquiring rental-purchase
21 agreements that are entered into in this state.

22 **420.02 Notice to the department.** (1) NOTICE REQUIRED. A rental-purchase
23 company shall file notice with the department, in the form and manner prescribed
24 by the department, within 30 days after commencing business in this state. A

1 separate notice is required for each place of business maintained by the
2 rental-purchase company.

3 (2) FEE. For each location for which a notice is filed under sub. (1), the
4 rental-purchase company shall pay to the department an annual fee of \$1,000. If a
5 rental-purchase company fails to timely pay the annual fee, the department shall
6 order the rental-purchase company to cease operating until the annual fee is paid.

7 **420.03 Price and cost limitations. (1) LIMITS ON CASH PRICES.** The cash price
8 for rental property offered by a rental-purchase company may not exceed the greater
9 of the following:

10 (a) An amount equal to twice the actual purchase price of the rental property,
11 including any applicable freight charges, paid by the rental-purchase company.

12 (b) The price at which property of like type and quality is offered, in the
13 ordinary course of business, for sale for cash in the market area of the
14 rental-purchase store where the property is offered for rental purchase.

15 (2) LIMITS ON COST OF RENTAL SERVICES AND OTHER CHARGES. The total amount
16 charged by the rental-purchase company for all required charges or fees, excluding
17 applicable taxes and any late fees or reinstatement fees, in a rental-purchase
18 transaction shall not exceed twice the maximum cash price of the property as
19 determined under sub. (1).

20 (3) ACQUISITION OF OWNERSHIP. At any time after the initial rental period under
21 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase
22 option, the lessee may acquire ownership of the rental property by tendering an
23 amount not to exceed 55 percent of the difference between the total of rental
24 payments necessary to acquire ownership of the rental property and the total
25 amount of rental payments paid for use of the rental property at that time, plus

1 applicable taxes, except that the lessee's early-purchase option amount may not be
2 less than the amount of one rental payment. Before a lessee acquires ownership of
3 the rental property as provided under this subsection, a rental-purchase company
4 may first require the lessee to pay any accrued unpaid rental payments and fees.

5 (4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED. A rental-purchase
6 company shall not disclose, in a rental-purchase agreement or otherwise, any
7 percentage rate calculation, including a time-price differential, an annual
8 percentage rate, or an effective annual percentage rate.

9 **420.04 Reinstatement of a rental-purchase agreement. (1)**

10 REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a
11 rental-purchase agreement that has ended without losing any rights or options
12 previously acquired if all of the following apply:

13 (a) The lessee voluntarily returned or surrendered the rental property within
14 7 days after the expiration of the rental-purchase agreement.

15 (b) Not more than 120 days have passed after the date on which the
16 rental-purchase agreement ended.

17 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
18 under sub. (1), the rental-purchase company may require the payment of all
19 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed
20 \$5, and the rental payment for the next term.

21 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section prohibits
22 a rental-purchase company from repossessing or attempting to repossess rental
23 property when a rental-purchase agreement ends, but such efforts do not affect the
24 lessee's right to reinstate as long as the rental property is voluntarily returned or
25 surrendered within 7 days after the rental-purchase agreement ends.

1 (4) PROPERTY AVAILABLE UPON REINSTATEMENT. Upon reinstatement, the
2 rental-purchase company shall provide the lessee with the same rental property, if
3 the property is available and is in the same condition as when it was returned to the
4 rental-purchase company, or with substitute property of comparable quality and
5 condition.

6 (5) NOTICE OF REINSTATEMENT RIGHTS. If the lessee is entitled to reinstatement
7 under subs. (1) and (2), within 15 days of repossession or voluntary return or
8 surrender of the rental property, the rental-purchase company shall provide written
9 notice to the lessee of the lessee's rights and obligations under this section.

10 **420.05 Rule making; enforcement.** (1) RULE MAKING. The department may
11 promulgate rules relating to rental-purchase company disclosure requirements in
12 connection with rental-purchase agreements as well as rules relating to any
13 requirement by the department for rental-purchase companies to maintain records
14 and make reports to the department.

15 (2) ENFORCEMENT. The department shall administer and enforce this chapter,
16 and any rule promulgated under, or order issued under, this chapter.

17 **420.06 Penalties.** (1) AWARD OF DAMAGES. Subject to sub. (3), a
18 rental-purchase company that violates any provision of this chapter, rule
19 promulgated under this chapter, or order issued under this chapter pertaining to a
20 lessee is liable to the lessee in an amount equal to the greater of the following:

21 (a) The actual damages sustained by the lessee as a result of the violation.

22 (b) If the action is not brought as a class action, 25 percent of the total payments
23 necessary for the lessee to acquire ownership of the rental property, but not less than
24 \$100 nor more than \$1,000.

1 (c) If the action is brought as a class action, the amount the court determines
2 to be appropriate, subject to sub. (2).

3 (2) DAMAGE LIMITATIONS IN CLASS ACTIONS. The total recovery by all lessees in
4 any class action or series of class actions arising out of the same violation may not
5 be more than the lesser of \$500,000 or 1 percent of the net worth of the
6 rental-purchase company. In determining the amount of any award in a class action,
7 the court shall consider, among other relevant factors, the amount of actual damages
8 awarded, the frequency and persistence of the violation, the rental-purchase
9 company's resources, and the extent to which the rental-purchase company's
10 violation was intentional.

11 (3) UNINTENTIONAL VIOLATIONS. A rental-purchase company is not liable for any
12 violation of this chapter if the rental-purchase company shows by a preponderance
13 of the evidence that the violation was not intentional and resulted from a bona fide
14 error, and the rental-purchase company maintained procedures reasonably adapted
15 to avoid such an error.

16 (4) COSTS AND ATTORNEY FEES. If a court awards any monetary amount under
17 sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for
18 the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees
19 as determined by the court.

20 **420.07 Inapplicability of Consumer Act and ch. 409.** A rental-purchase
21 company that has filed notice as provided under s. 420.02 (1) is not subject to the
22 Wisconsin consumer act, chs. 421 to 427, or any related rule or order adopted under
23 chs. 421 to 427, or to any provision of ch. 409, and any rental-purchase agreement
24 entered into by such a rental-purchase company may not be construed or regulated
25 as a security interest, credit sale, retail installment sale, conditional sale, or any

1 other form of consumer credit, nor considered to be the creation of a debt or extension
2 of credit.

3 **SECTION 3.** 421.202 (11) of the statutes is created to read:

4 421.202 (11) Any rental-purchase company that has filed notice as provided
5 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a
6 rental-purchase company.

7 **SECTION 4. Initial applicability.**

8 (1) This act first applies to rental-purchase agreements, and conduct pursuant
9 to those agreements, that are entered into on the effective date of this subsection.

10 **SECTION 5. Effective date.**

11 (1) This act takes effect on the 90th day after publication.

12 (END)

Godwin, Gigi

From: Malszycki, Marcie
Sent: Monday, February 06, 2012 10:12 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-2924/1 Topic: Rental purchase companies and agreements

Please Jacket LRB 11-2924/1 for the ASSEMBLY.